



COUNTY OF LOS ANGELES

CLAIMS BOARD

500 WEST TEMPLE STREET

LOS ANGELES, CALIFORNIA 90012

MEMBERS OF THE BOARD

September 15, 2003

Maria M. Oms
Auditor-Controller
Lloyd W. Pellman
Office of the County Counsel
Rocky Armfield
Chief Administrative Office

Honorable Board of Supervisors
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, California 90012

Re: **Juan Lemus, Jessica Lemus, Sandra Lemus, minors by
and through their Guardian Ad Litem, Juan Lemus v.
County of Los Angeles**
Los Angeles Superior Court Case No. BC 259 472

Dear Supervisors:

The Claims Board recommends that:

1. The Board authorize settlement of the above-entitled action in the amount of \$175,000.00, plus waiver of LAC+USC Medical Center's Bill in the amount of \$40,737.00.
2. The Auditor-Controller be directed to draw warrants to implement this settlement from the Department of Health Services.

Enclosed is the settlement request and a summary of the facts of the case.

The Litigation Report, including the Corrective Action Report, is being transmitted to you under separate cover by the Department of Health Services.

Return the executed, adopted copy to Frances Lunetta, Suite 648 Kenneth Hahn Hall of Administration, Extension 4-1754.

Very truly yours,

Maria M. Oms, Chairperson
Los Angeles County Claims Board

MMO/fsl

Enclosure

M E M O R A N D U M

September 5, 2003

TO: LOS ANGELES COUNTY CLAIMS BOARD

FROM: JON F. MONROY, Esq.
Monroy, Averbuck & Gysler

OWEN L. GALLAGHER
Principal Deputy County Counsel

RE: Juan Lemus, Jessica Lemus, Sandra Lemus, minors by and through
their Guardian Ad Litem, Juan Lemus v. County of Los Angeles
Los Angeles Superior Court Case No. BC 259472

DATE OF
INCIDENT: September 24, 2002

AUTHORITY \$175,000, Plus Waiver of LAC+USC Medical Center's Bill in the
REQUESTED: Amount of \$40,737

COUNTY
DEPARTMENT: DEPARTMENT OF HEALTH SERVICES

CLAIMS BOARD ACTION:

☐

Approve

☐

Disapprove

☐

Recommend to Board of
Supervisors for Approval

_____, Chief Administrative Office
ROCKY A. ARMFIELD

_____, County Counsel
LLOYD W. PELLMAN

_____, Auditor-Controller
MARIA M. OMS

on _____, 2003

SUMMARY

This is a recommendation to settle for \$175,000 the wrongful death lawsuit brought by Juan Lemus (husband), Jessica Lemus (daughter), and Sandra Lemus (daughter) for the death of Flor Lemus while hospitalized at LAC+USC Medical Center on March 16, 2001. The County, having billed \$40,737 for the provision of medical care, has a claim for reimbursement which will be waived.

LEGAL PRINCIPLES

The County is liable for the failure of its hospital and medical staff to provide services consistent with the appropriate standard of care for the circumstances encountered.

SUMMARY OF FACTS

On March 10, 2001, Flor Lemus, a 36-year-old woman with a disorder caused by the failure of the pancreas to release enough insulin into the blood (diabetes mellitus), was seen in the Emergency Room at LAC+USC Medical Center with complaints of severe headaches. An imaging study generated by computer synthesis of x-ray data (CT scan) indicated mild swelling (edema) of the brain. In order to confirm or exclude the possibility that her symptoms were the result of either bleeding within the skull cavity (intracranial hemorrhage), an infection, or an inflammation of the membranes covering the brain and spinal cord (meningitis), a long needle was inserted into Flor Lemus' spinal canal, at the level of the lumbar spine, to extract a small amount of spinal fluid (lumbar puncture). The results of the lumbar puncture were interpreted as showing an inflammatory response involving the brain or the meninges.

On March 11, 2001, Flor Lemus suffered two seizures, causing an extreme loss of oxygen and severe brain damage (hypoxic encephalopathy), resulting in brain death. After consultation with her family, medical personnel removed Flor Lemus from all life support, and on March 16, 2001, Flor Lemus died. The cause of death was attributed to diabetes mellitus, cerebral edema, and a downward displacement of brain tissue through the large opening at the bottom of the skull (tonsillar herniation).

The family of Flor Lemus is asserting that the lumbar puncture should not have been performed in the presence of brain edema because it may change the pressure gradient within the brain, and lead to further complications. The County's position is that the lumbar puncture was not contraindicated, and was medically necessary to confirm a proper diagnosis.

On August 28, 2002, a confidential meeting took place between County Counsel personnel, the County's defense attorney, representatives of the County's third party administrator, members of the Department of Health Services quality improvement program, and a County physician involved in this case. The purpose of this meeting was to develop an appropriate strategy for presenting and defending the County's position at the time of trial, as

well as to examine the case to evaluate and improve the quality of care rendered in a County hospital. The County physician was informed that this meeting was protected by the attorney-client privilege and applicable peer-review privileges.

On September 24, 2002, the County physician orally contacted the attorney for the family of Flor Lemus, and informed him of conversations that had taken place during the confidential meeting occurring on August 28, 2002. In addition, the County physician forwarded to the attorney for the family of Flor Lemus a copy of the County physician's written communication sent to the Medical Director of the Department of Health Services and County Counsel, which also discussed conversations that had taken place during the confidential meeting of August 28, 2002.

The unauthorized oral and written disclosures made by the County physician to the attorney of the family of Flor Lemus were, in the view of the County, untrue, inappropriate, a severe breach of the attorney-client privilege, and a breach of the confidential nature of the peer review process involving the evaluation and improvement of the quality of care rendered in a County hospital.

On October 21, 2002, the County sought to prevent the use at trial of any information obtained from the disclosures made to the attorney for the family of Flor Lemus by the County physician. However, the trial court ruled that the communications to the attorney for the family of Flor Lemus by the County physician constituted a waiver of the attorney-client privilege as to those communications. In addition, the trial court issued a ruling allowing the attorney for the family of Flor Lemus to depose the County physician. In order to prevent further disclosures by the County physician regarding conversations and opinions discussed during the confidential meeting of August 28, 2002, the County agreed to settle this matter.

DAMAGES

If this matter proceeds to trial, the claimants will likely seek the following:

Juan Lemus,	
Loss of Future Spousal Services	\$226,249
Loss of Future Support	
Loss of Care, Comfort	
and Companionship (MICRA limit)	\$ 83,334
Jessica Lemus,	
Loss of Care, Comfort	
and Companionship (MICRA limit)	\$ 83,333
Sandra Lemus,	
Loss of Care, Comfort	
and Companionship (MICRA limit)	\$ 83,333
Past Medical Expenses	\$ 26,462
Funeral Expenses	<u>\$ 10,000</u>
TOTAL	\$512,711

The proposed settlement includes:

Juan Lemus,	
Loss of Care, Comfort and Companionship	\$ 34,861
Jessica Lemus,	
Loss of Care, Comfort and Companionship	\$ 34,861
Sandra Lemus,	
Loss of Care, Comfort and Companionship	\$ 34,861
Attorneys Fees (MICRA Estimate)	\$ 50,417
Costs of Litigation	\$ <u>20,000</u>
TOTAL	\$175,000

A portion of the recommended settlement may be directed by claimants to be used to purchase an annuity. The amount and structure of the annuity has not been selected at this time.

STATUS OF CASE

The current trial date has been vacated pending approval of this settlement.

The disclosures made by the County physician to the attorney for the family of Flor Lemus included untrue and inappropriate statements regarding the County's defense counsel, which necessitated that the County hire the services of new counsel to assume the defense of the County in the underlying medical malpractice matter as well as to represent the interests of the County in responding to the actions of the County physician.

Expenses incurred by the County of Los Angeles in the defense of this case through July 15, 2003, are attorneys fees of \$63,474.73 and \$38,376.59 in costs.

The total cost to the County of Los Angeles, as a result of this settlement, is as follows:

Indemnity (Settlement Amount)	\$175,000.00
County Attorneys Fees and Costs	\$ <u>101,851.32</u>
TOTAL	\$276,851.32

EVALUATION

The County is unable to determine precisely the full extent of the unauthorized disclosure of privileged and confidential information to the attorney for the family of Flor Lemus by the County physician. However, because the County physician was privy to defense counsel's discussions concerning the contentions of the family of Flor Lemus and the family's expert witnesses, as well as discussions on developing an appropriate strategy for presenting and defending the County's position at the time of trial, it is reasonable to assume that those discussions may have been disclosed as well. In addition, the trial court's finding that the disclosures by the County physician constituted a waiver of the attorney-client privilege, and the court's order allowing the attorney for the family of Flor Lemus to depose the County physician, makes it reasonable to conclude that the trial court might allow the jury to hear and evaluate matters completely outside the merits of the case, thereby preventing the County from receiving a fair and objective trial in this matter. Therefore, settlement in this matter is recommended based on the untrue, inappropriate, and improper disclosure of confidential information in violation of the attorney-client and peer review privileges, which would prevent the County from successfully defending this case on its merits.

We join with our private counsel, Monroy, Averbuck & Gysler, and our claims administrator, Octagon Risk Services, Inc., in recommending settlement in the amount of \$175,000, and waiver of the County's medical billing not to exceed \$40,737.

The Department of Health Services concurs in this settlement.